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Attorneys for Defendant Zoho Corporation.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

TRICIA TAMKIN, an individual

Plaintiff,

v.

ZOHO CORPORATION, a California
Corporation.

Defendant.

Case No. 4:19-cv-07465-KAW

**DEFENDANT ZOHO
CORPORATION'S AMENDED
NOTICE OF REMOVAL OF
CIVIL ACTION**

Complaint Filed: October 28, 2019

**TO THE JUDGES OF THE UNITED STATES DISTRICT COURT FOR
THE NORTHERN DISTRICT OF CALIFORNIA, PLAINTIFF AND
PLAINTIFF’S ATTORNEYS:**

PLEASE TAKE NOTICE THAT, under 28 U.S.C §§ 1331, 1441, 1446, and 1454 defendant Zoho Corporation (“Zoho”) hereby removes the state court action described below from the Superior Court of the State of California for the County of Alameda where it is currently pending as Case No. RG19040983 to the United States District Court for the Northern District of California, and submits the following statements of facts, which entitles it to removal.

This Court has original jurisdiction over this action under 28 U.S.C. §§ 1331 and 1454 on the grounds that the Superior Court complaint seeks adjudication of a copyright dispute solely arising under federal law, 17 U.S.C. §§ 101 *et seq.*

COMPLIANCE WITH STATUTORY REQUIREMENTS

On or about October 28, 2019, Plaintiff Tricia Tamkin (“Plaintiff”) filed a complaint in the Superior Court of California for the County of Alameda, entitled *Tricia Tamkin. v. Zoho Corporation*, case no. RG19040983. Complaint, Exhibit A at p. 1. The Complaint asserts Zoho used without authorization Plaintiff’s name and likeness in marketing and advertising materials and alleges causes of action for (1) misappropriation of Plaintiff’s name and likeness under California law, (2) misappropriation of Plaintiff’s name and likeness under common law, (3) defamation, (4) violation of right of publicity under Illinois law, and (5) copyright infringement under common law. Complaint, Exhibit A at ¶¶ 12, 17-44. Zoho was served with the Summons and Complaint on November 4, 2019.

Pursuant to 28 U.S.C. § 1446(b)(1), a notice of removal may be filed “within 30 days after the receipt by the defendant, through service or

otherwise” of the initial pleading from which removability can be ascertained. 28 U.S.C. § 1446(b)(1). Here, Zoho’s notice of removal is timely because it is filed within 30 days after being served with the Summons and Complaint.

Pursuant to 28 U.S.C § 1446(d), Zoho will promptly provide written notice of removal of this action to Plaintiff and will promptly file a copy of this Amended Notice of Removal with the Clerk of the Superior Court of California for the County of Alameda.

The United States District Court for the Northern District of California embraces Alameda, the county in which this Action is brought. Therefore, the Court is a proper venue for this Action pursuant to 28 U.S.C. §§ 84 (c) and 1441(a).

STATEMENT OF THE GROUNDS FOR REMOVAL

As set forth more fully below, this Court has exclusive subject matter jurisdiction under 28 U.S.C. § 1331, which states that “the district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States,” and under 28 U.S.C. § 1454, which states that “[a] civil action in which any party asserts a claim for relief arising under any Act of Congress relating to patents, plant variety protection, or copyrights may be removed to the district court of the United States for the district and division embracing the place where the action is pending.”

The Superior Court Action Arises Under Federal Copyright Law

A state action can generally be removed if that action could have been brought originally in federal court, *i.e.*, if the District Court has original jurisdiction. 28 U.S.C. § 1441(a); *see also* 28 U.S.C. § 1454 (recognizing removal if an asserted claim for relief arises under “patents, plant variety protection, or copyrights”); *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987). To determine whether this Court has original jurisdiction, this Court “examine[s] the ‘well

1 pleaded' allegations of the complaint and ignore[s] potential defenses." *Beneficial*
 2 *Nat'l Bank v. Anderson*, 539 U.S. 1, 6 (2003) (citations omitted).

3 "The presence or absence of federal-question jurisdiction is governed by the
 4 'well-pleaded complaint rule.'" *Caterpillar Inc.*, 482 U.S. at 392. Under the well-
 5 pleaded complaint rule, federal-question jurisdiction arises where the "complaint
 6 establishes either that federal law creates the cause of action or that the plaintiff's
 7 right to relief necessarily depends on resolution of a substantial question of federal
 8 law." *Franchise Tax Bd. v. Constr. Laborers Vacation Trust*, 463 U.S. 27-28
 9 (1983). "Once an area of state law has been completely pre-empted, any claim
 10 purportedly based on that pre-empted state law is considered, from its inception, a
 11 federal claim, and therefore arises under federal law." *Caterpillar Inc.*, 482 U.S. at
 12 393.

13 A plaintiff's state-law cause of action is preempted under 17 U.S.C. § 301(a)
 14 if: (1) the work involved falls within the general subject matter of the Copyright
 15 Act as specified by sections 102 and 103; and (2) the rights that the plaintiff asserts
 16 under state law are equivalent to those protected by the Act in section 106 in works
 17 of authorship that are fixed in a tangible medium of expression. *See* 17 U.S.C. §
 18 301(a); *Kodadek v. MTV Networks, Inc.*, 152 F.3d 1209, 1213 (9th Cir.1998);
 19 *Valente-Kritzer Video v. Pinckney*, 881 F.2d 772, 776 (9th Cir.1989); *Del Madera*
 20 *Properties v. Rhodes & Gardner, Inc.*, 820 F.2d 973, 976 (9th Cir.1987).

21 Here, Plaintiff's common law copyright claim alleges ownership of the
 22 photograph of Plaintiff's likeness. Complaint, Exhibit A at ¶ 42. A photograph
 23 falls under the general subject matter of the Copyright Act. *See* 17 U.S.C.
 24 102(a)(5) ("pictorial, graphic, and sculptural works."). Plaintiff further alleges that
 25 Zoho's reproduction, visual display and distribution of Plaintiff's photograph is
 26 unlawful. Complaint, Exhibit A at ¶ 42. The rights asserted fall squarely under the
 27 rights protected by section 106(1), (3), and (5), *i.e.*, reproduction, distribution and
 28 display. Finally, Plaintiff seeks relief provided by 17 U.S.C. §§ 502 (injunction),

504 (damages and profits), and 505 (costs and attorneys' fees). Complaint, Exhibit A at p. 7. Plaintiff asserts copyright infringement as defined in the Copyright Act and seeks relief defined in the Copyright Act. *Vestron, Inc. v. Home Box Office, Inc.*, 839 F.2d 1380, 1382 (9th Cir. 1988) (“The complaint makes out an infringement claim and seeks remedies expressly created by federal copyright law.”).

Each of Plaintiff’s remaining causes of action depend on the same operative facts as the copyright claim, namely, unauthorized reproduction, distribution and display of Plaintiff’s photograph. *See* Exhibit A, Complaint, at ¶¶ 21, 25, 28, and 37. This Court has supplemental jurisdiction under 28 U.S.C. § 1367(a) because those claims are “so related” to the Copyright claims “that they form the same case or controversy under Article III of the United States Constitution.” Because all of Plaintiff’s claims arise from a “common nucleus of operative fact,” supplemental jurisdiction extends to those claims that do not enjoy original jurisdiction in this Court. *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715, 725 (1966); *Arizona v. Cook Paint & Varnish Co.*, 541 F.2d 226, 227 (9th Cir.1976).

Because Plaintiff’s copyright cause of action arises under the Copyright Act, this Court has original jurisdiction and this case is properly removed.

REMOVAL IS TIMELY PURSUANT TO 28 U.S.C. §1446(b)

A notice of removal must be filed “within 30 days after the receipt by the defendant, through service or otherwise” of the initial pleading from which removability can be ascertained. 28 U.S.C. § 1446(b)(1). This removal notice is timely because Zoho removed this action on November 14, 2019, within 30 days from being served with a copy of the Summons and Complaint.

INTRADISTRICT ASSIGNMENT

While this matter is an Intellectual Property Action and therefore may be assigned to any division, it has been removed from the Superior Court for the State

1 of California for the Alameda County and a substantial part of the events which
2 give rise to the Plaintiffs' claims are alleged to have occurred in the city of
3 Pleasanton in the County of Alameda where Zoho has its principal place of
4 business.

5 **WHEREFORE**, Zoho prays that the state court action now pending against
6 it in the Superior Court for the State of California for the County of Alameda be
7 removed to this United States District Court for the Northern District of California.
8

9 Date: November 14, 2019

By: /s/ Ryan J. Marton

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20 *Attorneys for Defendant ZOHO*
21 *CORPORATION*
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CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2019, I caused a true and correct copy of Zoho Corporation's Notice of Removal to be served on counsel of record for Plaintiff, D. Burgundy Morgan via e-mail at bmorgan@onellp.com, Deepali Brahmbhaat via email at dbrahmbhatt@onellp.com, and James D. Myers via e-mail at jmyers@sls-law.com.

Dated: November 14, 2019

By: /s/ Ryan J. Marton
Ryan J. Marton